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DISTRICT OF ARIZONA
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Malek Mohamed Seif,
aka Malek Mohamed Abdallah,

Defendant.

CR 01-0977-PHX-PGR

DETENTION ORDER

The matter is before the Court on the detention hearing which began November 1, 2001, was continued to November 6, 2001, and concluded on November 8, 2001. The Government is represented by counsel, Peter Sexton, Joseph Welty and John Webb. Defendant is present and is represented by counsel, Thomas Hoidal. The proceeding is tape recorded.

The Government seeks the detention of Defendant upon the grounds that he is a serious flight risk. The Government, however, does not claim that Defendant presents a

1 danger to the community.¹ Defendant disputes that he is a flight risk. The motion was taken
2 under advisement.

3 After considering all the credible and reasonably reliable evidence; the proffers
4 and arguments of counsel; the controlling and persuasive authorities on the issues sub judice
5 and the factors set forth in 18 U.S.C. §3142(g), the Court **FINDS** the following by a clear
6 preponderance of the evidence:

7 1. Except for his current incarceration, Defendant, age 36 (DOB: 9/24/65),
8 does not reside in the United States. Defendant first came to the United States in 1992 or
9 1993. After a short time as an enrolled student at a flight school in South Carolina, Defendant
10 moved to Tempe, Arizona to live with his younger brother, Omayya Seif, who was studying
11 urban planning at Arizona State University on scholarship. In 1994, Defendant returned to
12 the Republic of Djibouti,² Africa, his birthplace, to work for Djibouti Airlines. Djibouti was
13 formerly a French Colony. The Defendant traveled between Djibouti and the United States
14 several times in 1996 and 1998 to visit or live with his brother for relatively short periods of
15 time. In June, 1998, Defendant returned to Phoenix where he lived and worked until August,
16 2001. During this time, Defendant lived in, at least, three different apartments in Tempe.
17 Thus, Defendant did not have a stable residence when he lived in the United States.

18 2. Defendant is currently unemployed. Defendant's employment history in
19 the United States shows that when he returned to the United States in 1998, Defendant first
20 found employment in August or September as a cashier at a grocery store in south Phoenix
21 and then, in December, 1998, as a taxi cab driver for Yellow Cab Company, All-State Cab
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23 ¹ The Bail Reform Act (18 U.S.C. §3142) does not permit the Government to seek
24 the detention of a defendant on the basis that a defendant is a danger to the community unless
25 the crime charged is a "crime of violence" as defined in 18 U.S.C. §3156(a)(4). See, United
26 States v. Byrd, 969 F.2d 106 (5th 1992). The Indictment does not charge Defendant with a
27 crime of violence.

28 ² The Republic of Djibouti is just north of the Horn of east Africa on the Bab-el-
Mandeb strait at the southern entrance to the Red Sea. The capitol of the Republic of
Djibouti is Djibouti. See, www.infozoid.com (Search: Djibouti).

1 Company and AAA Cab Company over the following 2 ½ years. In April or May, 2001, he
2 left Phoenix to pursue a job as a pilot with Colgan Airlines in Manassas, Virginia. He was
3 not offered the job because he failed the instrumentation portion of his training. In August
4 and early September, 2001, Defendant traveled to Bangkok, Thailand twice to purchase
5 numerous trousers and shirts to sell in Djibouti to make money to finance his wedding.³
6 Thus, Defendant did not have stable employment when he worked in the United States.

7 3. Defendant is neither a citizen nor a national of the United States. Defendant
8 is a French citizen. If released from custody, Defendant may not lawfully work in the United
9 States under the name Malek Seif pursuant to the immigration laws of the United States.
10 Defendant's Alien file indicates that Defendant, according to the Government, fraudulently
11 obtained political asylum in the United States under the false name of Malek Abdallah.
12 Defense counsel argues that Malek Abdallah is a shortened version of Defendant's true and
13 complete name, Malek Mohamed Ben Mohamed Seif Mokbel Abdallah.⁴ Defendant's
14 French passport is under the name of Malek Seif.

15 4. Defendant has no family ties to the State of Arizona or to the United States
16 as a whole. Defendant's parents live primarily in Djibouti but periodically travel to
17 Marseille, France. Defendant's great grandfather emigrated from Yemen to Djibouti.
18 Defendant's father, now retired, moved from Aidan, a British Colony, to Djibouti in 1945
19 where he worked as a station manager for Ethiopian Airlines and as an airport manager until
20 1998. Defendant has an older sister and a younger brother who live in Djibouti who are
21 engaged in the professions of dentistry and medicine, respectively. Defendant's brother,
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23 ³ On September 11, 2001, Defendant was on a commercial flight from Bangkok to
24 an unknown destination when the plane was grounded in Tokyo due to the terrorists' attacks
25 in New York and Washington, D.C. While stranded in Tokyo, Defendant communicated to
26 his parents through the French Embassy which advanced his airfare to France. Defendant's
27 parents consented to reimburse the embassy for his airfare to France. Defendant subsequently
flew to Marseille, France where he was ultimately contacted by the FBI in October, 2001.

28 ⁴ The Court expresses no opinion on Defendant's true and correct name.

1 Omayya, and another brother and sister currently live in Marseilles, France. Defendant also
2 has another younger brother who lives in Djibouti.

3 Defendant has two friends who live in the Phoenix area, Bassel Nasser and
4 Anwar Alyafei. Mr. Alyafei is willing to serve as Defendant's third-party custodian, if
5 Defendant were released, but he will not allow Defendant to reside at his residence. Mr.
6 Alyafei advised Pretrial Services that he does not want his family to be disrupted. Mr.
7 Nasser declined to be Defendant's third-party custodian nor would he permit Defendant to
8 live in his home.

9 5. Defendant has no known criminal record in the United States. Thus, the
10 Defendant has established no track record of honoring a promise to appear at future court
11 proceedings if released by a judge or other judicial officer.

12 6. Defendant owns no real property in the District of Arizona or in any other
13 location in the United States. Owning real property in the United States would mitigate the
14 likelihood of his flight from the United States due to the potential loss of such property. He
15 owns no personal property in the United States other than his limited personal clothing and
16 luggage recently brought with him in October, 2001. Defendant has made no proffer that
17 Defendant, his family or friends are willing and able to post a significant cash or secured
18 bond on property in the United States as a condition of release that may reasonably assure
19 his future court appearances.

20 7. Defendant is an experienced international traveler who has admitted to
21 traveling to the following countries: India, Ethiopia, Yemen, France, Italy, United Kingdom,
22 Canada, Japan, Thailand, Egypt, Germany, Somalia and the United Arab Emirates.
23 Defendant advised Pretrial Services that he speaks six different languages. Thus, Defendant
24 would have little difficulty in fleeing the United States to, perhaps, a country that does not
25 have an extradition treaty with the United States.

26 8. The countries of Yemen, Ethiopia, Djibouti and Somalia have no extradition
27 treaties or agreements with the United States at the present time. Undisputedly, Defendant
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1 has substantial connections with, and experience living in, each of these countries.
2 Defendant studied airplane mechanics at a school in Ethiopia taught by Ethiopian Airlines
3 from 1987 to 1989. In 1994 and 1995 Defendant piloted shuttle flights between Somalia and
4 Ethiopia. Moreover, Defendant filed an application for political asylum in the United States
5 on December 10, 1998 as a Somali refugee wherein he claims he was born in Somalia, not
6 Djibouti.

7 The Government's counsel argues that Defendant is a serious flight risk
8 because, among others, Defendant might flee to one of these countries and the United States
9 would have no lawful means to extradite him back to the United States. Defense counsel
10 counters that Defendant would be willing to execute a consent agreement to permit
11 extradition back to the United States as a condition of his release. No evidence or case law,
12 however, has been provided to the Court that such consent would be honored by any of the
13 countries without an extradition treaty or agreement with the United States if it is later
14 withdrawn or repudiated by Defendant. Additionally, it seems that such consent would be
15 susceptible to the argument that it may be invalid due to involuntariness or coercion of
16 Defendant in light of the circumstances existing at the time of his consent, i.e. his agreement
17 is given only as a condition precedent to obtaining his release from custody. Thus, the Court
18 gives little weight to Defendant's novel offer to sign a consent agreement to permit
19 extradition back to the United States.

20 9. Defendant's fiancée lives in Yemen where she and Defendant were planning
21 to wed shortly before his arrest herein. Defendant's likely longing to be with his future wife
22 outside the United States is relevant to whether Defendant is a serious flight risk.

23 10. Defendant's admitted history in the United States discloses that Defendant
24 has lied and used deception to his advantage. For example, in 1993 Defendant told the North
25 American Institute of Aviation's flight school administration in South Carolina that he quit
26 school because his mother was ill and he had to be with her. Defendant thereafter received
27 a substantial refund on his paid tuition. In reality, Defendant admits he left school because
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1 he thought the instruction was poor. He then moved to Tempe to live with his brother.
2 Another example of his untruthfulness is his political asylum application wherein he claimed,
3 among others, that he was smuggled into the United States in 1998 from Somalia which is
4 contrary to the information he gave the FBI in his October 25, 2001 interview and the FBI's
5 independent investigation. Thus, Defendant's promise to appear at future court proceedings
6 is likely unreliable and untrustworthy. The Court gives it little weight.

7 11. It is undisputed that Defendant voluntarily agreed to return to the United
8 States from France to answer questions by the FBI in connection with its investigation of the
9 terrorists' attacks in the United States on September 11, 2001. The FBI paid for his airfare
10 to Phoenix. A federal grand jury indicted Defendant on the various counts in this Indictment
11 on October 25, 2001, the same day as Defendant's interview with FBI agents in Phoenix. He
12 was arrested early the next day.

13 Defense counsel argues that if Defendant were a serious flight risk, he would
14 not have agreed to voluntarily return to the United States. There is no evidence or proffer,
15 however, that Defendant knew or was informed at the time he met with FBI agents in France
16 that he was the target of a federal investigation involving false statements allegedly made in
17 connection with applications to the Social Security Administration and the Federal Aviation
18 Administration. Therefore, it is likely that if Defendant were so advised or advised that he
19 would be arrested if he returned to Phoenix per the FBI's request, he would not have
20 voluntarily returned to the United States as he did.

21 12. In addition to the charges in this Indictment, Defendant has an additional
22 motive to flee the United States at this time. It is common knowledge from the widespread
23 news coverage⁵ that Hani Hanjour, a Saudi national and a former resident of Mesa and
24 Tucson, Arizona, is believed to have been the pilot and leader of the five terrorists who
25 hijacked American Flight 77 that deliberately crashed into the Pentagon on September 11,
26 2001. Defendant admits to knowing Hanjour, who had some of his flight training in Phoenix.

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28 ⁵ See, Sunday Edition, New York Times, November 4, 2001.

1 Defendant has disclosed that he knew Hani Hanjour as they frequented the same Islamic
2 Mosque in Tempe. He also admits to having attended a dinner party in Tempe with Mr.
3 Hanjour and other middle eastern men at another individual's home to celebrate a different
4 individual's successful completion of his flight training. After initially avoiding the question,
5 stating he could not remember and then crying, Defendant advised the FBI that he thought
6 he last saw Hani Hanjour in possibly March or April, 2001 in the Mosque. Defendant denies
7 any prior knowledge of the terrorists' attacks or who may be responsible for them.

8 The Court wishes to make abundantly clear that it has been provided no
9 evidence, proffer or information that Defendant had prior knowledge of the September 11th
10 terrorists' attacks or that he was a member of any conspiracy to assist or otherwise commit
11 the evil deeds perpetrated on thousands of innocent lives in New York, Washington D.C. or
12 Pennsylvania. The relevant point of the information in the aforesaid paragraph is that
13 Defendant is likely motivated to flee the United States and would not voluntarily return for
14 fear that the Government may choose, at a minimum, to hold him as a material witness⁶ if
15 multiple counts of conspiracy to commit murder, likely capital offenses, and other serious
16 crimes were filed related to the September 11th terrorist attacks, clearly the most egregious
17 crimes committed in American history.

18 Whether a defendant poses "a serious risk" of flight is a fact-specific
19 examination to determine if there exist conditions or a combination of conditions that would
20 reasonably assure a defendant's appearance at future court proceedings if released. See, 18
21 U.S.C. §3142(f)(2)(A); United States v. Carter, 996 F.Supp 260, 265 (W.D. N.Y. 1998);
22 United States v. Berrios-Berrios, 791 F.2d 246, 250 (2d Cir. 1986), cert. dismissed, 479 U.S.
23 978, 107 S.Ct. 562, 93 L.Ed.2d 568 (1986); United States v. Motamedi, 767 F.2d 1403, 1407
24 (9th Cir. 1985)[“we are not unmindful of the presumption of innocence and its corollary that
25 the right to bail should be denied only for the strongest of reasons, citing Truong Dinh Hung

26 ⁶ Title 18 U.S.C. §3144 permits the detention of a person whose testimony is
27 material in a criminal proceeding if it is shown that it may become impracticable to secure
28 the presence of such person by subpoena.

1 v. United States, 439 U.S. 1326, 1329 (1978)]. Contrary to defense counsel's arguments, the
2 case of United States v. Townsend, 897 F.2d 989 (9th Cir. 1990)(foreign nationals charged
3 with false statements and fraud-type crimes with no ties to the prosecuting district or U.S.,
4 did not reside or work in U.S., owned no property in U.S., and had no relatives in the U.S.
5 were properly detained as serious flight risks) supports the Government's request for
6 Defendant's detention.

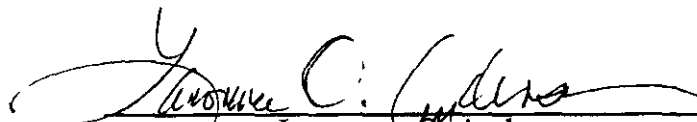
7 Based upon all of the foregoing,

8 The Court **FINDS** that the Government has sustained its burden of proof by a
9 clear preponderance of the evidence that Defendant is a serious flight risk and that no
10 condition or combination of conditions would reasonably assure Defendant's appearance at
11 future Court proceedings as required were he released.

12 Accordingly,

13 **IT IS ORDERED** that Defendant shall remain detained until further order of
14 the Court.

15 DATED this 8th day of November, 2001.

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19 Lawrence O. Anderson
20 United States Magistrate Judge
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